

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2214 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 - No

S.A. JADHAV

Versus

STATE OF GUJARAT

Appearance:

MR PV HATHI for Petitioner

Ms MANISHA LAVKUMAR, AGP instructed by

M/S MG DOSHIT & CO for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 29/07/1999

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution the petitioner, who was at the relevant time working as an Assistant Conservator of Forests (ACF) and has retired by now on superannuation, challenged the communication dated 21.11.1984 (Annexure "G") from the Principal Chief Conservator of Forests, Gujarat State in

so far as the petitioner was granted deemed date of promotion to the cadre of ACFs. with effect from 15.1.1982 and not from an earlier date and also another communication dated 25.11.1985 (Annexure "H") rejecting the petitioner's representation for joining the period between 27.11.1976 to 30.4.1980 as services rendered in the cadre of ACFs.

2. The petitioner who joined as a Beat Guard in the year 1956 was promoted as Forester and subsequently promoted as Range Forest Officer (RFO) in the year 1964. On 4.11.1976 the petitioner was promoted as an ACF, but on 26.11.1979 the petitioner was ordered to be reverted to the post of RFO. According to the petitioner, the said reversion order was actually implemented only on 1.5.1980. Thereafter, the petitioner passed the departmental examination on 23.9.1981. The petitioner was thereafter promoted as an ACF by order dated 21.1.1983. The petitioner requested for an early deemed date of promotion to the post of ACF which was granted to the extent of giving the petitioner deemed date of 15.1.1982 as per the order dated 21.11.1984 at Annexure "G" to the petition. The petitioner's request for treating the period between 4.11.1976 to 1.5.1980 as a part of the services rendered on the post of ACF came to be rejected by the order dated 25.11.1985 at Annexure "H" to the petition.

It is the aforesaid orders which are under challenge in the present petition.

3. At the hearing of this petition, Mr PV Hathi, learned counsel for the petitioner submitted that under the Gujarat Forest Department (Forest Officers Examination) Rules, 1972 (hereinafter referred to as "the Examination Rules"), an unqualified RFO could also be promoted as ACF if qualified persons were not available. Hence, there was nothing illegal about the petitioner's promotion to the post of ACF on 4.11.1976. It was not the case of the respondents that qualified persons were available and, therefore, the petitioner was required to be reverted. Hence, the reversion order dated 26.11.1979 was illegal and, therefore, the respondents may be directed to treat the petitioner as being continued in the cadre of ACFs. with effect from 4.11.1976 onwards.

In the alternative, Mr Hathi submitted that the petitioner ought to have been given an earlier deemed date immediately after the petitioner passed the departmental examination on 23.9.1981 as a number of posts of ACFs were lying vacant on the date on which the

petitioner passed the examination.

Thirdly, Mr Hathi submitted that in any view of the matter even if the decision that deemed date of 15.1.1982 cannot be disturbed, the decision of the respondents to give the petitioner benefit of deemed date of 15.1.1982 only for the purpose of seniority was illegal in so far as the petitioner was not given the benefit of the said deemed date for the purpose of pay fixation and arrears of difference of salary and other consequential benefits.

4. In reply, Ms Manisha Lavkumar, learned AGP for the respondents has opposed the petition and submitted as under :-

(i) The challenge to the reversion order dated 26.11.1979 is grossly delayed in view of the fact that the present petition was filed only in the year 1986 i.e. after a lapse of about seven years.

(ii) Under the Examination Rules, to be eligible for promotion, an RFO has to pass the departmental examination within the prescribed period in the prescribed chance. Even as per the Rules for promotion to the post of ACF, the petitioner was required to pass the departmental examination before being eligible for regular promotion to the post of ACF. Admittedly, the petitioner had not passed the said examination till September, 1981. Hence, the petitioner's promotion to the post of ACF on 4.11.1976, even if not illegal, was fortuitous and did not confer any right upon the petitioner.

5. Having heard the learned counsel for the parties, the Court finds no substance in the first two contentions raised by the learned counsel for the petitioner though there is some substance in the third contention raised on behalf of the petitioner. Under the ACF Promotion Rules read with Examination Rules, 1972, the petitioner was required to pass the departmental examination for getting the eligibility for promotion to the post of ACF. The petitioner passed the said examination only on 23.9.1981. Hence, if for administrative exigencies the petitioner was given promotion to the post of ACF on ad-hoc basis between 4.11.1976 and 26.11.1979/1.5.1980, the said fortuitous promotion did not confer any right upon the petitioner either for seniority or any other purpose. Even if Mr Hathi's contention is accepted that other RFOs

were also promoted as ACFs during the said period and even if the promotion was legal in the sense that Rule 9 of the Examination Rules permits such ad-hoc promotions, in view of the contents of the ACF Promotion Rules, the petitioner did not acquire the eligibility criteria for promotion to the post of ACF without passing the departmental examination which the petitioner did only on 23.9.1981.

6. As regards the second contention, even after passing the departmental examination the petitioner's case was not considered when his juniors' case were considered for promotion to the cadre of ACFs on account of the pending departmental inquiry in which the petitioner came to be exonerated. The respondents, therefore, considered the petitioner's representation for deemed date of promotion and assigned 15.1.1982 as the petitioner's deemed date of promotion to the cadre of ACFs. The assertion made by the petitioner in para 8(5) of the petition that the petitioner's juniors were promoted between September, 1981 and 15.1.1982 has been categorically denied in para 18 of the reply affidavit. Hence, none of the petitioner's legal rights were violated, merely because there were vacancies in the cadre of ACFs in September, 1981, the petitioner was not entitled to be regularly promoted and no injustice was done to the petitioner since none of his juniors were promoted between September, 1981 and 15.1.1982.

7. As regards the third contention that the services rendered by the petitioner in the cadre of ACFs between 4.11.1976 to 1.5.1980 should have been added to the services being rendered by the petitioner in the cadre of ACFs, the contention cannot be accepted because the petitioner cannot get through the back-door what he was not entitled to as already discussed above.

8. However, as far as the last contention is concerned, Mr Hathi is on firm ground in making a grievance that once the petitioner was given the deemed date of promotion of 15.1.1982, the said benefit could not have been confined for the purpose of seniority only as mentioned in the communication dated 21.11.1984 at Annexure "G" to the petition.

In reply to the said grievance, the deponent of the reply affidavit has stated in para 12 of the reply affidavit that the petitioner has been granted deemed date of promotion as 15.1.1982, the date on which his junior was promoted after 23.9.1981 and further that the petitioner has also been granted the benefits due to him

in view of his deemed promotion to the post of ACF with effect from 15.1.1982. This statement in reply affidavit should take care of the petitioner's grievance. However, in view of the language used in the communication dated 21.11.1984 at Annexure "G", it is clarified out of abundant caution that the petitioner shall be given the benefit of deemed date of 15.1.1982 in the cadre of ACFs for the purpose of seniority as well as pay fixation.

10. Subject to the aforesaid clarification that the petitioner will get the benefit of deemed date of promotion to the cadre of ACFs for the purpose of seniority as well as pay fixation, the petition deserves to be dismissed and is accordingly dismissed.

Subject to the aforesaid clarification, Rule is discharged with no order as to costs.

Sd/-

July 29, 1999 (M.S. Shah, J.)

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